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Procedural Legitimacy and Private Transnational Governance

Are the Good Ones Doing Better?

Marianne Beisheim/Klaus Dingwerth

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Procedural Legitimacy and Private Transnational Governance. Are the Good Ones Doing Better?

Marianne Beisheim/Klaus Dingwerth

Abstract

Private governance schemes deploy a significant share of their resources to advocate their legitimacy. Assuming that their primary concern is to ensure their own success, this suggests that the initiators of private governance schemes presume a strong relation between a scheme's perception as legitimate on the one hand and its success on the other. Based on this observation, this article explores the general hypothesis that the procedural legitimacy of private governance schemes – defined in terms of inclusiveness, transparency, and deliberativeness – enhances their prospects for success. We particularly focus on *how* right process may translate into effectiveness. To this end, the article identifies three mechanisms: the development of ownership based on inclusive, fair and representative participation; social learning and persuasion based on deliberative procedures; and social control based on transparency and accountability. The three mechanisms are subjected to a plausibility probe in an illustrative case study of the Global Reporting Initiative (GRI), a private governance scheme in the field of corporate sustainability politics. All in all, the study shows how the GRI's success can be related to procedural legitimacy. In particular, it suggests that while inclusiveness and deliberation are mostly relevant to *gain* legitimacy, transparency and accountability are primarily relevant to *maintain* the legitimacy of private transnational governance schemes.

Zusammenfassung

Im Dezember 2006 fand am SFB 700 ein Workshop statt, dessen Teilnehmer/innen die Frage diskutierten, inwiefern die Legitimität und die Effektivität transnationaler Politiknetzwerke und Public Private Partnerships zusammenhängen. Das vorliegende Arbeitspapier war die Grundlage für diese Diskussion. Es geht davon aus, dass Legitimität *eine* wichtige Voraussetzung für den Erfolg privater Steuerung ist. Offen ist jedoch die Frage, *wie* dies funktioniert. Im Papier versuchen wir, entsprechende Kausalmechanismen zu entwickeln. Zunächst konzeptionalisieren wir die abhängige Variable „Erfolg" als die gelungene Steuerung des Verhaltens der beteiligten privaten Akteure im Sinne der vereinbarten Normen (*compliance*). Im nächsten Abschnitt stellen wir verschiedene Quellen und Formen der Legitimität vor und diskutieren, warum wir prozedurale Legitimität als einem zentralen Erfolgsfaktor für private Governance sehen. Auf dieser Basis entwickeln wir Überlegungen zu den aus unserer Sicht drei zentralen Kausalmechanismen, wie sich prozessuale Legitimität in Regeleinhaltung übersetzt: (1) Aneignung durch inklusive, faire und repräsentative Partizipation; (2) Lernen und Überzeugung über Deliberation und den Bezug auf Argumente; (3) Soziale Kontrolle auf der Basis von Transparenz und Verantwortlichkeit. Unsere Überlegungen zu den Kausalzusammenhängen plausibilisieren wir in einer kurzen empirischen Studie zur Global Reporting Initiative (GRI). Dort zeigt sich, dass Inklusivität und Deliberation besonders wichtig sind, um eingangs Legitimität zu erlangen, Transparenz und Rechenschaftspflichten um Legitimität zu erhalten.

Contents

1. Introduction[1]

The increasingly central role of non-state actors in making and implementing norms and rules beyond the state is a prominent feature of the contemporary global governance literature.[2] As a result, non-state governance arrangements such as the Forest Stewardship Council (FSC), the Internet Corporation for Assigned Names and Numbers (ICANN) or the International Accounting Standards Board (IASB) receive attention as instances in which private actors define issues, make rules, and monitor compliance with these rules. As far as their output is concerned, these governance processes are functionally similar to international regimes – with the important difference that it is not states, but non-state actors who generate the "principles, norms, rules, and decision-making procedures" and the expectations associated with them (Haufler 2000).

As the phenomenon of non-state governance beyond the state is of relatively recent origin, conceptual and theoretical consensus is still weak. Authors refer to qualitatively similar phenomena as global public policy networks (Reinicke et al. 2000), private authority (Cutler et al. 1999), non-state market-driven governance systems (Cashore 2002), civil regulation (Bendell 2000), or simply as multi-stakeholder processes (Hemmati et al. 2002). As a result, the primary focus of the literature has thus far been on mapping the purportedly new phenomena, either by developing typologies of different forms of public and private regulation or through case studies on specific aspects of individual schemes.[3] At the same time, a systematic analysis of underlying conditions and dynamics and of the impact and legitimacy of these "new forms of governance" is only gradually taking shape.

In this context, our paper intends to draw together two strands of the debate about private governance: the debate about the *success prospects* of (public-)private governance arrangements, and the recurrent debate about their *normative procedural legitimacy*. The interaction between legitimacy and success is discussed controversially in the literature. While some authors assume that the success of post-national forms of governance is linked, at the very least, to their *perception as legitimate* (Brozus et al. 2003; Neyer 2004; Reinicke et al. 2000; Zürn 2004), others argue the opposite and stress the potential *trade-off between normative procedural demands and actual performance* (Dahl 1994; Keohane/Nye 2001, Scharpf 1999; see also below for Bäckstrand 2006). In the following, we explore the hypothesis that the normative procedural legitimacy of transnational private governance schemes positively affects their prospects for success. In other words, we examine to what extent those schemes that best fulfil procedural demands associated with nor-

1 This paper was first presented at the DVPW-Sektionstagung "Internationale Politik", 6-8 October 2005, in Mannheim, and the SCORE-Conference "Organizing the world – rules and rule-setting among organizations", 13-15 October 2005, in Stockholm. For comments on earlier drafts, we thank the anonymous reviewers and our colleagues, especially Tanja Börzel, Magnus Boström, Wolfgang van den Daele, Jörg Friedrichs, Markus Jachtenfuchs, Alexander Kocks, Sebastian Krapohl, Markus Lederer, Rune Premfors, and Klaus Dieter Wolf.

2 See Beisheim (2004); Cashore (2002); Cutler et al. (1999); Dingwerth (2007); Hall/Biersteker (2002); Knill/Lehmkuhl (2002); Ronit/Schneider (1999); Schäferhoff et al. (2007); Schuppert (2006).

3 Arts (2002); Börzel/Risse (2005); Falkner (2003); Hall/Biersteker (2002).

mative models of democratic decision-making (i.e., that are "good" from the standpoint of such models) are also more likely to succeed in guiding the behaviour of their addressees (i.e., to "do better" than other schemes).

Our usage of the three core concepts of this article is relatively straightforward: *Normative procedural legitimacy* refers to a scheme's performance in terms of four values associated with democratic decision-making, namely inclusiveness, transparency, accountability, and deliberativeness. *Success* refers to a scheme's capacity, whether directly or indirectly, to guide the behaviour of its addressees. This understanding is closely related to outcome-effectiveness or compliance. And finally, a *private transnational governance scheme* is an arrangement in which non-state actors (occasionally together with governmental actors) from more than one country devise rule systems for other non-state actors in more than one country.

Our argument unfolds in three broad steps. In a first step, the following sections further specify our usage of "success" (section 2) and "legitimacy" (section 3) and theorize the relation between the two (section 4). Building on this discussion, section 5 suggests three mechanisms that can be thought of as linking procedures to success: the development of ownership based on inclusive, fair and representative participation; social learning and persuasion based on deliberative procedures; and social control based on transparent and accountable decision-making. Section 6 subjects these mechanisms to a plausibility probe in a case study of the Global Reporting Initiative; a final section summarizes and discusses our main findings.

2. The Success of Private Transnational Governance Arrangements: Conceptual Clarifications

Notions of success or effectiveness are notoriously difficult to operationalize. For the purpose of our article, a definition raises two questions. First, success for whom? Second, success in terms of what?[4]

Success for whom? In view of this first question, three possible answers come to mind. First, a private governance scheme can be beneficial to those who initiated it. Second, it can benefit a broader community of stakeholders and deliver club goods for them. Third, it may benefit society at large (Wolf 2006). The three conceptions of success are not necessarily mutually exclusive – in practice, a scheme may benefit its initiators *and* a wider community of stakeholders without being detrimental to society at large. Yet such harmony is not a necessary feature of private governance schemes. In fact, most schemes benefit some, but generate significant externalities for others.

4 We are grateful to Lothar Rieth, Sandra Schwindenhammer and Klaus Dieter Wolf for clarifications on these points.

In this paper, we define success in relation to the goals as set by the scheme's initiators and members. When we ask whether legitimation through democratic procedures is causally linked to the success of private governance schemes, we are thus interested in whether aspects such as inclusiveness, transparency, and deliberation are essential for private transnational governance schemes to reach their own stated goals and to effectively guide the behaviour of their addressees accordingly. Since these goals are commonly stated in terms of the interests of a somewhat broader stakeholder community, the first and second conceptions of success outlined above often coalesce in practice. For instance, the initiators of the Marine Stewardship Council – Unilever and the WWF International – did not state their goals in terms of the expected benefits for themselves, but for a broader range of stakeholders interested in sustainable fishery management.

Success in terms of what? Second, how do we determine an appropriate measure for success? Are governance schemes a "success" if they generate papers and workshops (*output*), if addressees adhere to the rules set by a private governance scheme (*compliance, outcome*), or if (parts of) the problem is (are) being solved as a result of the scheme (*impact*)?[5] Our usage of success in this article comes closest to the second version: A scheme is successful to the extent that it actually guides the behaviour of its addressees (assuming that in the long run this will help to improve things). This requires that, first, addressees behave at least roughly in line with the goals of the scheme and, second, that this behaviour is attributable to the scheme. In the way we use the term, the mere number of addressees that publicly commit to a scheme – for instance, multinational firms that participate in the UN Global Compact – is therefore insufficient to qualify a scheme as successful unless we can show that the commitment also leads to a change in practice. In sum, we conceptualise success as *the steering of behaviour of norm addressees towards the ultimate goals that motivate a private governance scheme.*[6]

3. The Procedural Legitimacy of Private Transnational Governance Arrangements: Conceptual and Theoretical Clarifications

Mark Suchman correctly observes that while "many researchers employ the term *legitimacy*, […] few define it" (Suchman 1995: 572, emphasis in original). To avoid this mistake, this section further specifies how we apply the term in this article.

5 On the distinction between output, outcome and impact, see Young (1999); Börzel/Risse (2002); Biermann/Bauer (2005); Wolf (2008).

6 Note that our conceptualisation leaves open whether or not the success of a specific private governance scheme itself is normatively desirable. An answer to this question will depend on a range of factors, most notably the content of the respective norms and rules, the procedures by which these norms and rules have been put in place and the externalities generated by the scheme.

3.1. What is Legitimacy?

The term legitimacy has a normative (or "philosophical") and an empirical (or "sociological") dimension (Bernstein 2004; Buchanan/Keohane 2006). In the words of Allan Buchanan and Robert O. Keohane, "to say that an institution is legitimate in the normative sense is to assert that it has *the right to rule*".[7] In contrast, "an institution is legitimate in the sociological sense when it is widely *believed* to have the right to rule" [8] (Buchanan/Keohane 2006: 405, emphasis in original).

The normative concept of legitimacy traditionally applies to the authority of the state, for in open pluralist societies, only those actors whose decisions are authoritative and binding on others are required to establish their legitimacy (Beisheim 1997). In other words, only a body that can prescribe specific types of behaviour and impose sanctions for infringement of its rules is required to morally justify itself. Such a justification may be based either on fair procedures (*input and throughput legitimacy*, usually associated with procedural norms derived from democratic theory) or on just outcomes (*output legitimacy*, usually associated with norms derived from theories of justice). In this article, we focus on the former (i.e. *normative procedural legitimacy*) and explore the ways in which four criteria that are central to democratic theory – inclusiveness, transparency, accountability and deliberation – affect the success of private governance schemes.

3.2. Why is Legitimacy Important for Private Governance?

As compliance with rules made through private governance arrangements is *voluntary*, an often-heard argument is that they make democratic processes redundant. Yet this argument is problematic both as a normative and as an empirical statement:

From a normative standpoint, democratic theory demands that collectively binding decisions result from democratic processes. A key question in this context is when a decision crosses the threshold of being "binding". It seems useful to conceptualise the binding nature of decisions not as a dichotomy (i.e., *either* binding *or* non-binding), but rather as a continuum (i.e., *more* or *less* binding). Moreover, a decision may not only become binding *by law* (i.e., be *legally binding*), but also in social terms (i.e., be *socially* or *non-legally binding*). From a normative perspective, it is therefore appropriate to subject private governance schemes to critical review whenever they develop a significant impact. In accordance with widely shared values about appropriate modes

7 Buchanan and Keohane (2006: 411) further define the right to rule as meaning "both that institutional agents are morally justified in making rules and attempting to secure compliance with them and that people subject to those rules have moral, content-independent reasons to follow them and/or to not interfere with others' compliance with them."

8 See, for instance, Suchman (1995: 574): "Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."

of collective decision-making, democratic procedures can serve as a proper standard for such a review.

As an empirical statement, the reverse argument – that private governance institutions need legitimacy precisely *because* they are legally non-binding – seems more convincing. Unable to draw on the binding force of hard law, the success of private governance schemes depends on their social acceptance as rightful.[9] The International Relations (IR) literature generally distinguishes between three mechanisms through which the addressees of norms and rules are being pushed and pulled towards compliance. These mechanisms can broadly be summarized as *coercion* based on power differentials, *incentives* based on actors' self-interests, and *legitimacy* or *authority* backed by ideas and normative beliefs (Hasenclever et al. 1997; Hurd 1999). In the context of private transnational governance coercion is largely absent. Any norms and rules beyond the state are intrinsically "soft" regulatory instruments. Even *intergovernmental* regimes are only to a very limited degree backed by the sanctioning power of a central authority. For *private* governance beyond the state, this applies in a dual sense: Not only is there no central enforcement agency beyond the state, but within the states themselves, the provisions adopted through private governance arrangements have no legally binding force either. Plus, while societal self-regulation at the domestic level may still take place in a "shadow of hierarchy", this no longer applies to self-regulation beyond the state (Jachtenfuchs 2003: 505 et seq.). Given these limited opportunities to enforce compliance, the focus shifts to the individual motivation to comply with private governance rules. The need to convince addressees of the rightfulness of a rule becomes part of a necessary system of compliance management (Chayes/Chayes 1995) which, in view of the limited opportunities for compliance enforcement, is not only a sensible addition to, but an essential prerequisite for success.

In general, such an argument would be in line with arguments made in the literature on states' compliance with international rules (see e.g. Franck 1988, 1990) and with the empirical findings of the procedural justice literature (cf. Klosko 2000: 208-229).[10] To the extent that rules have come into being in accordance with right process, these literatures hold, "they appear to exert a strong compliance pull" (Franck 1988: 712) on addressees. In contrast, to the extent that right process elements are absent, rules are easier to avoid by actors "tempted to pursue [their] short-term self-interest" (Franck 1988: 712). Broadly in line with these thoughts, several authors have argued for a link between procedural legitimacy and actual success (Bäckstrand 2006; Bernstein 2004; Buchanan/Keohane 2006). Karin Bäckstrand holds that "the conventional wisdom underpinning environmental multilateralism in the 1990s is that more participation, accountability and transparency are the basis for stronger environmental policies and a more effective institutional framework" (Bäckstrand 2006: 470). More specifically, she sees the "governance from below" paradigm as holding that "input legitimacy will increase output legitimacy through

9 As a result, non-coercive compliance is occasionally treated as an indicator of (empirical) legitimacy (see e.g. Schneider 2005, 10; referring to Hurd 1999).

10 George Klosko argues that, "in recent years, a body of research has established the importance of people's opinions about the procedural side of distribution which have been found frequently to outweigh the distributive side in affecting support for organizations" (Klosko 2000: 208).

deliberative mechanisms for stakeholder inclusion" (Bäckstrand 2006: 473). Steven Bernstein (2004) as well as Buchanan and Keohane (2006) similarly refer to democratic procedures as the gold standard when it comes to content-independent moral reasons for complying with political decisions. Bernstein concludes that "it may be that democratic legitimacy rooted in justice or fairness is the unavoidable substantive basis of legitimate governance, whatever the level" (Bernstein 2004: 16).

Yet procedural legitimacy and effectiveness are also often seen as complementary or even competing. For instance, Bäckstrand notes that "high output legitimacy in terms of effective collective problem-solving can, on some accounts, *compensate for low input legitimacy*" and that a "lack of effective regulatory capacity *prompts the need for greater input legitimacy* in terms of transparent and accountable decision making processes" (Bäckstrand 2006: 472f, emphasis added).[11] As mentioned above, many even speak of a trade-off between democratic procedures and effectiveness, according to which transnational governance schemes can maximize their performance *either* in terms of desirable procedures *or* in terms of desired outcomes.

In sum, while contemporary IR scholarship frequently refers "to the importance of legitimacy for international order, institutions, and what today we refer to as governance" (Bernstein 2004: 2), at the same time, the nature of the relation between different conceptions of legitimacy and the functioning of governance mechanisms is contested. And, even more importantly, an explicit discussion of "how and why legitimacy operates among international institutions" (Hurd 1999: 381) is largely absent in the literature. It thus seems warranted to further explore these links.

4. The Link between Legitimacy and the Success of Private Governance

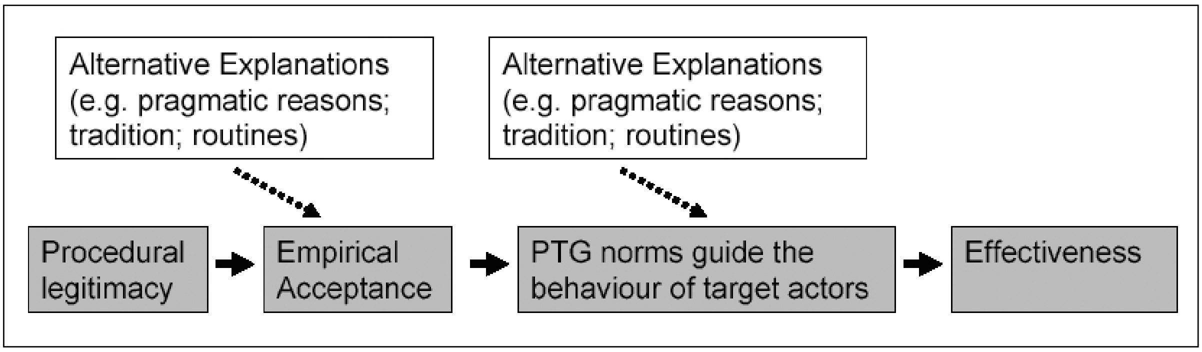
What is lacking is a detailed analysis of the *causal mechanisms* underlying the relationship between legitimacy and effectiveness of private governance institutions. How, precisely, does greater legitimacy improve (or diminish) the prospect for success? What are the pathways that connect the two variables? How important are procedural aspects of decision-making compared to the substance of norms and rules? All these are largely unresolved questions that can best be answered by developing specific hypotheses and subjecting the latter to empirical study. While the objective of such a study would ultimately be to ascertain whether the supposed interplay between legitimacy and effectiveness exists at all and to define the conditions under which it becomes relevant, our paper is confined to the initial step in this larger endeavour. More precisely, in the following we are interested in identifying more specific hypotheses about

11 In her own research on transnational policy networks in the wake of the World Summit on Sustainable Development, Bäckstrand is interested in the "balance between effectiveness on one hand, and representation and accountability on the other hand, between substantive outcomes and procedural demands" (Bäckstrand 2006: 484). The notion of balance also suggests a trade-off between procedural demands and effectiveness.

how normative procedural legitimacy might influence the success of private transnational governance schemes.

In very general terms, we assume a two-step process that links the two variables. In a first step, *normative procedural legitimacy* – that is, legitimacy based on procedures associated with democratic theory – is expected to lead to *empirical social acceptance* of the governance scheme as rightful. In a second step, this empirical recognition of the governance scheme is expected to increase the likelihood that addressees will adapt their behaviour in accordance with the norms and rules that result from the governance process (see Figure 1).

Figure 1: From Procedural Legitimacy to Effectiveness of Private Transnational Governance (PTG)



In what follows, our argument relates to the shaded area in Figure 1. We are primarily interested in the link between procedural legitimacy on the one hand and the complex of empirical recognition as rightful and behavioural change on the other hand.

Obviously, a number of *alternative explanations* may account for the behaviour of addressees. For instance, specific problem structures or actor constellations may facilitate the success of some governance schemes, while constituting a strong impediment in other cases (Zürn 1992; Zangl 1999). Moreover, the specific content of norms and rules or the design of information and monitoring systems may influence the likelihood that addresses will commit and adhere to a scheme (Mitchell 1998). Private governance schemes may also refer to norms that have already been negotiated in intergovernmental forums. In this case we could speak of a legitimacy transfer from public to private governance arrangements (Bernstein/Cashore 2004; Wolf 2006). Third, the responses of organizations that addressees identify as similar to themselves and/or on whose support they depend may trigger isomorphic dynamics within specific fields of organizational activity (DiMaggio/Powell 1983). And finally, even where legitimacy acts as an important driver, moral reasons are not the exclusive basis for conferring legitimacy. Instead, addressees may also accept an organization as rightful because it promotes their interests ("pragmatic legitimacy") or because it conforms to norms they largely take for granted ("cognitive legitimacy"). As a result, legitimacy can be gained and maintained not only through democratic procedures, but also through a wide range of other means (Suchman 1995). In sum, procedural legitimacy is therefore only *one* factor among others when we wish to understand the success of private transnational governance schemes. Yet given that private governance schemes deploy a significant share of their resources to advocate their procedural legitimacy – thereby signalling that they perceive such legitimacy as a key to success – it seems warranted to single out this factor for the purpose of this analysis.

5. Procedural Legitimacy as a Success Factor for Private Governance: Three Social Mechanisms

Following up on the ideas presented in the previous section, the purpose of this section thus is to identify various *social mechanisms* that describe *how* procedural legitimacy translates into success. Mechanisms can generally be thought of as "the *processes* that account for causal relationships among variables" (Campbell 2005: 42, emphasis in original). According to Gerald F. Davis and Christopher Marquis, they constitute "'sometimes-true theories' […] that provide 'an intermediary level of analysis in-between pure description on the one hand, and universal social laws, on the other'" (Davis/Marquis 2005: 336; citing Coleman and Hedstroem/Swedberg 1996). As Davis and Marquis further illustrate: "If a regression tells us about a relation between two variables – for instance, if you wind up a watch it will keep on running – mechanisms pry the back off the watch and show *how*" (Davis/Marquis 2005: 336, emphasis in original). Methodologically, tracing causal mechanisms primarily serves to develop more fine-grained explanations for social phenomena (Checkel 2006: 363; Tarrow 2005: 29-34). In following the approach of specifying social mechanisms, our general idea therefore is to theorize about *how* normatively qualified procedures may be linked to success and to then empirically check how well these "sometimes-true theories" fare in accounting for the success or failure of specific private governance schemes.

In identifying the social mechanisms that can be expected to link the procedural legitimacy of transnational policy processes with their success, we draw on criteria that together constitute the core of most approaches to democratic governance beyond the state: inclusiveness, transparency, accountability and deliberation. The following paragraphs identify three social mechanisms associated with these criteria (see Table 1): The development of (1) ownership based on inclusive, fair and representative participation; (2) social learning and persuasion based on deliberative process; and (3) social control based on transparency and accountability.[12]

12 The link between the three criteria and the three mechanisms is such that each characteristic – inclusiveness, transparency and deliberation – constitutes the central element of one of the three mechanisms. The other two characteristics may further strengthen the respective mechanism, but are not necessary for it to work. Moreover, all three mechanisms are based on *ceteris paribus* assumptions.

Table 1: Mechanisms that link legitimacy and success of private governance

Key elements of normative procedural legitimacy	Causal mechanisms	Success
(1) Inclusiveness, fairness and representativeness	(M1) Ownership through participation	
(2) Deliberation	(M2) Social learning and persuasion	Enhanced compliance
(3) Transparency and accountability	(M3) Social control	

5.1. Ownership on the Basis of Inclusive, Fair and Representative Participation

The legitimacy of a decision-making process can be established through the inclusion of a broad range of stakeholders. In normative terms, this requirement is firmly embedded in virtually all variants of democratic theory. However, participation per se does not guarantee democratic process. Instead, equal and fair rights of participation are required as a complementary element. Three factors are significant in this context. First, *all* stakeholder interests should be represented effectively to establish congruence between decision-makers and decision-takers *(inclusiveness)*. Second, participation processes should be fair. In other words, all stakeholders should be able to participate in the process either on an equal basis or on the basis of morally justified graduated participation rights (*fairness*). Third, participants must be sincere and legitimate representatives of their constituencies (*representativeness*).

The causal mechanism which links these aspects of right process to subsequent compliance can be labelled as *ownership through participation*. "Ownership" is a word frequently used in the discussion on developmental politics, where it refers to the level of identification of stakeholders with projects that concern them (OECD-DAC 2005). According to this mechanism, it can be assumed that the general support of stakeholders for a norm or rule and their willingness to compromise increase if they have been involved – either directly or through their delegates – in negotiating these norms and rules. As a result of inclusive and fair procedures, stakeholders become "owners" of the process as the duration and quality of their participation increase. Ownership contains both an emotional and a rational component. The emotional component evolves as participants grow "attached" to a project in which they engage substantially together with others. On the other hand, the prospect of direct involvement increases the expectation that the addressees will be able to gather relevant information and put forward and defend their own interests in the negotiating process. All else being equal, we can assume that, as a result of such ownership, organizations are more likely to accept the costs of implementing norms and rules if relevant decision-makers within the organization have been actively involved in the negotiations. We would like to add, however, that the participation (and thus ownership) of any individual in a negotiation process as such is insufficient. At this point, the "representativeness" of the participating stakeholder spokespersons comes in. It is essential that agents have a sufficient mandate by their principals – all the more, as in the end the drafted norms and rules need to be accepted not only by the agents but by the principals.

Mechanisms of ownership through inclusion are often referred to in the literature. Marleen van de Kerkhof claims that "the involvement of actors from society [...] can improve awareness and support for specific policy measures; it can enhance the legitimacy of the decisions taken" (van de Kerkhof 2006: 279 et seq.. More specifically, she summarizes that "involving stakeholders and reaching a mutual agreement among them is assumed to decrease the chance that they will not comply with the policies that result form the process" (van de Kerkhof 2006: 282). Bäckstrand similarly holds that "'ownership' of outcomes and agreements by a wider range of stakeholders who are affected by issues and who may be partly responsible for policy implementation [...] is desirable on grounds of the efficacy of democracy" (Bäckstrand 2006: 472). On the other hand, inclusiveness may also have negative effects in as much as "'all-inclusive' governance arrangements might lead to a serious lack of efficiency and reduced problem-solving capacity" (Börzel/Risse 2005: 212; see also Göbel 2007).

5.2. Social Learning and Persuasion Based on Deliberation

A second social mechanism can be identified with reference to the *deliberative quality of opinion and will formation.* This mechanism, which is based in part on the normative and empirical assumptions made in theories of deliberative democracy,[13] can be described as *social learning and persuasion through arguing.*

The mechanism is based on the assumption that deliberative elements in the negotiating process help persuade addressees. The quality of deliberative processes can be ensured by placing a premium on rational argument and dismissing weak or unfounded reasoning. Where participants in deliberative processes have adequate opportunities to present their arguments and critically appraise their opponents' counter-arguments, they are able to recognize the outcomes of this process as "reasonable". Ideally, a consensus is achieved at the end of the deliberative process; stakeholders will thus implement the resulting decisions because they are convinced of their normative and empirical appropriateness.

Even where consensus may not be in reach, deliberation may induce learning and behavioural change in accordance with the specific goals of a private governance scheme. In contrast to consensus-oriented multi-stakeholder dialogues, more open-ended deliberative processes may not only help to elicit the value orientations and preferences of different stakeholders, but also

13 Theories of deliberative democracy are based on the view that "legitimacy in complex societies must be thought to result from the free and unconstrained public deliberation of all about matters of common concern" (Benhabib 1996). For an overview, see Chambers (2003).

lead actors to redefine a given situation in the light of new evidence, new arguments or simply through being able to see the same issue through the eyes of other stakeholders with different value orientations and preferences (van de Kerkhof 2006: 282-284). Such interpretive shifts may in turn lead to changes in actual behaviour.

Yet, it would be naïve to assume that deliberation will automatically lead to success. Instead, it may also lead to deadlock. In particular, deliberation is unlikely to work "in problem situations where the stakeholders have different axioms, assumptions and concepts with regard to the problem under consideration" (van de Kerkhof 2006: 282). In that case, deliberation may make deep divides visible, thereby instigating or solidify dissent, opposition and conflict among the parties to a dialogue. Moreover, the consensus orientation of deliberative processes may inhibit good results, for instance, when the ultimate goal shifts "from reaching a quality decision [...] towards reaching an agreeable one" (van de Kerkhof 2006: 282), thereby leading to a premature consensus on the lowest common denominator. Finally, consensus orientation is likely to lead to a selection of only those stakeholders who are willing to reach a consensus, while it excludes others who are more sceptical or have more radical views on the issue at stake.

5.3. Social Control Based on Transparency and Accountability

As a third mechanism, the ability to control rule-makers is likely to increase the willingness of addressees to adhere to the outcomes of a rule-making process. This third mechanisms differs from the previous ones inasmuch as it does not require that the addressees (or their representatives) of a governance scheme are actually participating in the rule-making process. Instead, it assumes that audiences may also accept a rule that results from a transparent and accountable process.

Transparency and accountability are part of almost any normative account of democratic procedures. *Accountability* refers to a principal-agent relationship "in which an individual, group or other entity makes demands on an agent to report on his or her activities, and has the ability to impose costs on the agent" (Keohane 2003: 139). Keohane distinguishes between internal and external accountability, the first referring to authorization and support by principals to agents within an institution, the latter to individuals or groups outside the acting entity who are nevertheless affected by its activities. Building on this distinction, Thomas Risse argues that, "if the agents involved in governance arrangements are both internally accountable to their 'clients' [...] and externally accountable to those who are affected by their decisions [...] input legitimacy should be insured" (Risse 2006: 185-186). For such social control to function properly as a mechanism, the *transparency* of the decision-making process is an essential prerequisite.

Giving stakeholders the opportunity to signal their support of or dissatisfaction with specific decision-making options and to intervene when deemed necessary has various effects: First, it allows individual actors – whether themselves members of the scheme or merely members of an interested public audience – to "blame and shame" those who defect from a scheme once the latter is operational. Such blaming and shaming is only feasible if the norm or rule in question is widely considered as rightful. In this context, transparency and accountability may serve as proxies for a scheme's legitimacy for those who are not themselves actively involved in decision-making. Since it signals that rule-makers have "nothing to hide" from their addressees, a transparent and accountable process may enlarge the latter's willingness to adhere to the ultimate outcomes. This specific mechanism should work in particular if target actors belong to well-organized sections of society; in these cases they may assume that "their" organizations would have challenged the rule-making processes if it had interfered with their group's specific interests. Finally, if the initiators of a scheme are required to regularly justify their decisions to the outside world, we would expect that the reasons given are internalised on the long run, thereby further enhancing addressees' motivation to comply with the rules of the scheme.

Yet, transparency and accountability also have a price. In particular, they may conflict with other criteria such as deliberativeness. Thus, representatives are often unable to engage in a sincere exchange of arguments unless meetings occur behind closed doors; moreover, the more control constituencies exert on their representatives, the less they may be persuaded by the arguments of others. And finally, transparency may also increase the danger of de-legitimisation of private governance schemes, for instance when information that is made available to the public is used by critics to challenge the organization.

6. Plausibility Probe: The Global Reporting Initiative

The purpose of this section is to exemplify the three mechanisms identified in the previous section and test their plausibility.[14] Does evidence in the actual practice of private governance schemes support the theoretically imagined social dynamics?

In doing so, we focus our attention on the Global Reporting Initiative (GRI) (Dingwerth 2007). The GRI was created in 1997 as a partnership of corporations and environmental groups associated in the Coalition of Environmentally Responsible Economies (CERES). Since its inception, the ambition of the GRI has been to make "reporting on economic, social and environmental performance as routine and comparable as financial reporting" (GRI 2003a: 4). As its main instrument to achieve this aim, the GRI develops and advertises its *Sustainability Reporting Guidelines*. The Guidelines contain reporting principles and performance indicators intended to provide guidance to reporting organizations on how and what to report. The aim of the Guidelines is to enable report users – rating agencies, investors, shareholders, employees, consumers and local communities – to evaluate a company's sustainability performance and to compare it to that of its competitors. By making reporting routine and comparable, the GRI also follows the more general aim to improve corporate sustainability performance through identifying best practice and putting pressure on those whose performance deviates from best practice.

14 On the notion of a plausibility probe, see Eckstein (1975).

In terms of its *success*, the GRI has managed to position itself as the leading sustainability reporting scheme. The organisation is praised for its pragmatic approach and for its commitment to continuous improvement of its Guidelines. A first version of the Guidelines was developed in 2000; revised versions were published in 2002 and 2006. The Guidelines themselves are widely considered as a viable compromise between comprehensiveness and feasibility of corporative non-financial reporting. In December 2002, 200 organizations had registered their reports with the GRI; by January 2007 that number had reached close to 1.000, with annual growth rates ranging from 24 to 90 per cent and averaging 50 per cent over the four-year period.[15] In terms of its normative pull, the GRI has generated an expectation that "good companies" report on their performance in relation to sustainability and that they base their reports on the GRI framework. Current estimates suggest that roughly forty per cent of all CSR reporters are using the GRI Guidelines in preparing their reports. In addition, the GRI maintains that 47 of the top 50 company reports identified by SustainAbility, Standard & Poor's and UNEP have referenced the GRI Guidelines (GRI 2003a: 8, 2004a). As it has become the leading non-financial reporting standard, the GRI's implicit (re-)definition of corporate sustainability constitutes a common frame of reference for thinking about sustainable business practice. In sum, the GRI can thus be considered as a relatively successful private transnational governance scheme.[16]

In terms of its *normative procedural legitimacy*, the GRI also scores relatively high. As we illustrate below, its decision-making process includes a wide range of stakeholders and significant deliberative elements and is fairly transparent. Given that the GRI is relatively democratic *and* relatively successful, it lends itself to an examination of our three mechanisms. The following discussion thus investigates to what extent the GRI is successful *because* it adheres to normatively qualified procedures. More specifically, it investigates *whether* and *how* the inclusiveness, deliberation and transparency of decision-making translate into compliance. For each mechanism identified in the previous section, we first give a brief description of the core characteristic – that is, the actual inclusiveness, deliberativeness and transparency of the GRI process – and then discuss to what extent the GRI's performance on this specific characteristic contributes to the organization's success.

6.1. Ownership through Inclusion

The Global Reporting Initiative stresses that it "derives its legitimacy from balanced, global, multi-stakeholder participation at all levels" (GRI 2003b). According to its self-image, the GRI is "one of the few organisations to task stakeholders with the creation of its main product"

15 For the most recent number of reporters, see http://www.globalreporting.org/NewsEventsPress/LatestNews/2007/NewsJan07NewReporters.htm; 01.02.2007. Growth rates are calculated on the basis of the 2003 to 2005 annual activities reports published by the organization. The number of reporters for 2006 is based on http://www.globalreporting.org/NewsEventsPress/LatestNews/2006/NewsDec06OS.htm; 01.02. 2007.

16 For a critical evaluation of the potential for further growth of the GRI see however Palenberg et al. (2006).

(Dickinson 2006: 1). To live up to this credo, the GRI includes a wide range of stakeholders in the making of its Sustainability Reporting Guidelines and of the associated Technical Protocols and Sector Supplements.

In the initial phase of the GRI, the *Steering Committee* was the central decision-making body of the GRI. Membership in the Steering Committee was by invitation. Decisions about membership were prepared by CERES and the United Nations Environment Programme (UNEP) as a collaborating partner of the GRI and, once it had been set up, approved by the Steering Committee. To gain the support of its stakeholders, the GRI's "global perspective" required the organisation to secure balanced representation of geographical regions as well as of different stakeholder groups. In the words of a former member of the GRI Steering Committee, such balance was essential to GRI's credibility: "It *had* to have private sector input; it *had* to have labour input; it *had* to have NGO input. Otherwise those stakeholder groups wouldn't necessarily accept the GRI."[17]

Between 2000 and 2002, participation in the development of the Guidelines was therefore extended and organised more systematically. The Steering Committee remained the central body, but redefined its role primarily as a supervisor of the Guidelines revision process. The largest part of the revisions for the 2002 Guidelines was prepared in the *Measurement Working Group* (MWG), a body of over 130 experts and stakeholders set up in 2001. After several rounds of revisions of the initial documents, a draft version of the 2002 Guidelines was published on the GRI website in March 2002 (GRI 2002b). At the end of the sixty days public comments period, comments received from over eighty parties amounted to over 300 pages, which the Revisions Working Group analysed before finalising the new Guidelines (GRI 2002d). The 2002 Guidelines were eventually approved by the new Board of Directors that succeeded the Steering Committee in 2002. They were publicly released at the World Summit on Sustainable Development in Johannesburg in August 2002 (GRI 2002c).

In addition to participation in the working groups or in one of the GRI governing bodies, so-called *Structured Feedback Processes* (SFPs) and participation in the *Stakeholder Council* provide further entry points for participation in the development of the Guidelines. SFPs are an institutionalised means to seek comments on GRI documents. Coordinated by the GRI Secretariat, their primary element is "a questionnaire that guides participants through a variety of issues and asks for comments and considerations about further improvements to a GRI document" (GRI 2004b). SFPs have informed the revision of the 2000, 2002 and 2006 versions of the Guidelines. Their scope has been expanded over the time, and the revision process for the 2006 Guidelines also included regional roundtables in different world regions.

Finally, the *Stakeholder Council* formally represents the interests of various constituencies within the GRI. It meets annually to discuss the progress of the GRI and debate "key strategic issues". Moreover, it appoints new board members, makes strategic recommendations to the Board,

17 Personal interview with a former member of the GRI Steering Committee, 8 April 2005.

gives advice on the GRI's activities, and participates, through individual members, in GRI working groups (GRI 2002g: articles 14-17). The sixty seats on the Stakeholder Council are allocated according to stakeholder groups and geographical representation; currently these are business (22 seats), civil society organisations (16), mediating institutions (16), and labour (6) (GRI undated-a). Stakeholder Council members are elected by the so-called Organisational Stakeholders of the GRI, a category that is open to all parties that support the general ideas behind the GRI and are willing (and able) to pay a modest annual membership fee. The currently over 380 Organisational Stakeholders[18] are grouped according to the four GRI constituencies with each constituency electing its own representatives on the Stakeholder Council (GRI 2002g: articles 12-17).

To what extent does this record of inclusiveness generate a sense of "ownership" among participants? At a very general level, the GRI itself communicates that it "depends on its wide and diverse engagement with stakeholders to create a growing level of interest in the content of reports, precisely because these stakeholders have been involved in drafting the guidelines and have ownership of the same" (GRI 2002a). In a similar vein, a recent article by a GRI associate asks whether the stakeholder-driven decision-making process in the GRI is "worth the effort". Answering in the affirmative, the article suggests a similar dynamic as the abovementioned quotation:

> *"It is challenging for GRI to convene these seemingly divergent stakeholder groups and facilitate consensus […]. The GRI's commitment to realising these challenges means that the Guidelines are a robust product that celebrates significant ownership and applicability for diverse users […]. As a result, many perceive GRI's reporting infrastructure as the global de facto standard in sustainability reporting practice" (Dickinson 2006: 1).*

When the author cites a staff member of the GRI Secretariat who participated in one of the GRI's working groups the emotional component of ownership becomes visible:

> *"By the end of the process, the group was passionate. They may have started with different languages, but by the end they shared a common understanding. They gave their own experiences to get others; they gained each other's respect; and they have more in common than initially thought. The group believes in what they have created" (Dickinson 2006:1).*

Thus, at least for the organization itself, this first mechanism seems central – unless, of course, we classify the abovementioned quotations as mere rhetoric. But the words of one external observer seem to confirm: "The guidelines, *thanks* to GRI's *massive commitment to inclusiveness*, have fast become the leading way for companies to respond to the growing global demand for corporate accountability."[19]

18 See http://www.globalreporting.org/NewsEventsPress/LatestNews/2007/NewsJan07NewOS.htm; 1.2.2007.

19 Bill Birchard in Tomorrow, November/December 2000, cited in Corporate Europe Observer (2002, emphasis added).

A more solid test for the relevance of ownership as a social mechanism lies in the comparison of the reporting practice of organizations represented at different levels of decision-making in the GRI. We would expect Organizational Stakeholders – the quasi-members of the GRI that elect the Stakeholder Council – to adhere more closely to the GRI reporting scheme than non-members. Next, we would expect organizations represented in the Measurement Working Group (MWG) – the group that developed the performance indicators included in the 2002 Guidelines – to be better reporters than mere Organizational Stakeholders. Finally, we would expect organizations represented in the so-called Core MWG – the leaders of subgroups of the MWG – to do better than organizations that are "merely" represented in the MWG itself. The numbers indicated in Table 2 support our assumption.

Table 2: GRI reports and adherence level by participation level[20]

	All TNCs	Organisational Stakeholders	Measurement Working Group	Core MWG
Share of business organizations with GRI reports	1.7 % (approx. 1.000 reporters out of 60.000 TNCs)	40 %	81 %	71 %
Adherence level of reports				
No. of reports	1966	246	61	14
In accordance	15 %	32 %	38 %	43 %

While less than 2 per cent of all transnational corporations have registered sustainability reports with the GRI, the numbers for business members of the Organizational Stakeholders group (40 per cent), of the MWG (81 per cent), and of the Core MWG (71 per cent) are significantly higher. Moreover, the level of adherence to the GRI reporting scheme also rises as participation becomes more meaningful. While only 15 per cent of all sustainability reports registered with the GRI claim the highest of three adherence levels ("in accordance"), this number rises substantially with participation in the OS group (32 per cent), the MWG (38 per cent) and the Core MWG (43 per cent). Given that organizations in all three groups – Organizational Stakeholders, MWG members and members of the Core MWG – do not differ systematically in terms of their

20 Numbers are based on The GRI Register (http://www.corporateregister.com/gri/; 17.01.2007) and own calculations based on the information provided by The GRI Register.

general attitudes towards sustainability reporting, it is thus fair to assume that the adherence level rises *as a result of* increasing quality of participation in the GRI.

By and large, these illustrations seem to provide some plausibility for the hypothesis that *giving representatives of organizations targeted by a private governance scheme an appropriate opportunity to provide input to a fair negotiating process increases the likelihood that they will develop ownership of its outcomes and subsequently view these outcomes as binding on the conduct of the organizations they represent.*

6.2. Social Learning and Persuasion based on Deliberative Procedures

In the GRI rhetoric, deliberation is emphasized in a similar way as inclusiveness. In his closing remarks at the inauguration ceremony of the permanent GRI in 2002, GRI initiator Robert Massie thus stressed the "willingness to listen, to trust, to act in good faith" that had characterised the GRI from its start (GRI 2002f: 65). In practice, the primary sites of deliberation within the GRI are (1) the board of directors and (2) the working groups:

(1) Steering Committee/Board of Directors. As a small body operating on the basis of consensus decision-making, the Steering Committee – as the early executive organ of the GRI – fulfils two basic preconditions for a high quality of deliberations. As one member recalls, consensus decision-making implied that, in the actual practice of decision-making, "you really have to find out why someone cannot accept something and find a solution that everybody accepts".[21]

In addition to small size and consensus procedures, trust among the members of a decision-making body and a commitment to the collective endeavour are further essentials for a deliberative mode of communication. As both of these preconditions cannot be expected to be present from the outset, the atmosphere at initial meetings of the committee has been described as "tense" and "moderately sceptical". Tensions resulted from different views on the issue – for instance between campaign groups and business – but also from a lack of familiarity among some of the parties. For instance, as one participant recalls, labour representatives and professional accountants "probably had never been in the same room with each other".[22]

However, trust building was facilitated by a relatively high level of continuity of membership in the Steering Committee. As a result, a participant recalls that after the first two or three meetings tensions decreased because committee members got to know each other and because of a "growing sense that this big bold vision was indeed possible".[23] Over the course of the first year, commitment to this vision increasingly became a motivation for individual members. In addition, it facilitated the establishment of a collective identity and of a constructive atmosphere

21 Interview with a former member of the GRI Steering Committee, 8 April 2005.

22 Interview with a former member of the GRI Steering Committee, 11 April 2005.

23 Interview with a former member of the GRI Steering Committee, 11 April 2005.

within the Steering Committee. Overall, the Steering Committee thus provided very favourable conditions for a deliberative style of communication. This general claim also holds for the Board of Directors that replaced the Steering Committee in 2002. Usually, conflicts are resolved without calling for a vote and the Board operates on the basis of "sufficient consensus".[24]

(2) The Measurement Working Group. The MWG constitutes a second deliberative forum in the development of the Sustainability Reporting Guidelines. Divided into small subgroups of eight to ten individuals whose regular discussions focused on relatively specific aspects of the Guidelines and consensus-driven in its internal decision-making, the MWG similarly fulfils two basic conditions for a deliberative mode of interaction.

In contrast to the Steering Committee, the MWG's tight schedule, however, impeded a longer trust-building phase. In addition, the subgroups often communicated electronically or through conference calls and only rarely met in person. As a result, no strong collective identity emerged. Moreover, individual subgroup leaders showed varying levels of commitment to the cause of the MWG. Overall, the quality of deliberations was therefore more limited than in the case of the Steering Committee. Accordingly, the atmosphere in the run-up to the 2002 Guidelines has been described as tense. While civil society actors were focused on details of the decision-making process, business representatives preferred to proceed to substantive issues without further delay.[25]

In January 2002, the MWG concluded its work and submitted its recommendations to the Revisions Working Group (RWG). As the Johannesburg summit came closer, discussions within this group were strongly focused on the task at hand. When a group member raised concerns whether comments received via the structured feedback process had been properly included into the MWG draft, a former MWG member conceded that they had "made a good faith effort to review all feedback" but that they had also "made a lot of decisions over 48 [hours]." Nonetheless, it was agreed that, if the RWG was to override MWG decisions, it needed to explain why (GRI 2002h).

In sum, while time constraints constituted an obstacle to exploiting the full deliberative potential, this example illustrates that the GRI's governance bodies fulfil at least basic criteria for meaningful deliberation. But what causal effects can be ascribed to these deliberative elements of the GRI process? First, deliberations helped participants to understand the issues at stake in different ways and to partially redefine their own interests. When asked if they or their fellow participants in the GRI process had modified their views on sustainability reporting as a result of their involvement with the GRI, interviewees frequently answered in the affirmative. Participants observed a gradual convergence of views as "people were able to see things from the perspective of the other side". For instance, civil society representatives learned about the complexities of implementing sustainability reporting in practice. In turn, business participants

24 Interview with a member of the GRI Board of Directors, 8 March 2005.

25 Interview with a former member of the Measurement Working Group, 10 March 2005.

learned what issues mattered to the people outside business and to better understand their own footprint in society.[26] Second, the deliberative character of the GRI is also reflected in the regular revision of its Guidelines which allows new evidence to be incorporated in the common reporting framework. That the GRI explicitly conceives of itself as a "learning organization" gives participants in the GRI process a reason to expect that their contribution is desired and that it constitutes a core element of the organization's learning process.

In terms of more direct evidence, Debbie Dickinson reports that "those involved in a recent GRI Guidelines development working group agree that stakeholder engagement produces universally applicable, credible, and technically superior results" (Dickinson 2006: 1). Moreover, she reports that for working group participants, diversity of participation was a particularly positive feature of deliberations as it "enabled everyone, individually and collectively, to constantly learn from each other: 'You begin to understand each other's positions and gain a new insight into the needs and agendas of some sectors'" (Dickinson 2006: 1).

In sum, these are at least indications that the second mechanism of social learning and persuasion based on deliberative process does have an empirical counterpart. On the basis of these indications, we might therefore hypothesise that *private transnational governance processes that link decision-making to meaningful deliberative elements are more likely to ensure compliance with their decisions than governance processes that do not include such elements.*

6.3. Social Control Based on Transparency and Accountability

The initiators of virtually all private governance schemes put a strong rhetorical emphasis on *transparency* – frequently paired with practical efforts to render decision-making transparent. In the case of the GRI, the articles of association assign clear responsibilities to each governance body. They commit the Board to develop "procedures that enhance and ensure the transparency of decisions and decision-making processes" and the Secretariat to "[post] on the Internet minutes of meetings of the Board, Stakeholder Council and Technical Advisory Council" (GRI 2002g: art. 24.8).

In practice, the GRI makes drafts of all relevant documents available to the public in a timely manner and informs stakeholders about how their feedback is dealt with. For the development of the 2000 Guidelines, a memorandum that outlined the process for the Guidelines revisions was posted on the internet to inform stakeholders about their opportunities to get engaged. For the development of the 2002 Guidelines, a similar process was in place. As an additional element, all public comments on the draft Guidelines were posted unless feedback companies explicitly asked not to do so (GRI 2001, 2002e).

26 Interviews with a member of the GRI Board of Directors, 8 March 2005 and with a former member of the GRI Steering Committee, 11 April 2005.

A number of formal and informal control mechanisms ensure *accountability* at various levels of the GRI process. First, the relatively complex institutional arrangement provides for checks and balances between governing bodies. Second, the Stakeholder Council serves as a sounding board for the Board and Secretariat. Council members are expected to maintain dialogue with stakeholders in the regions they are representing and to "present input to the Stakeholder Council from the constituencies they represent regarding the needs, expectations, and other priority issues related to the GRI and the Guidelines" (GRI undated-b). Third, the GRI's approach to publicly setting its own targets allows stakeholders to evaluate the organisation in terms of its performance vis-à-vis these targets. For example, stakeholders may access all registered reports via a publicly accessible database maintained by the GRI, thereby facilitating the external control of compliance with the GRI Guidelines. Finally, the GRI is keenly aware that "any key stakeholders who undertook active advocacy to undermine GRI would create a serious problem" (Waddell 2002: 7). Critical stakeholder groups such as business, labour or influential civil society organizations thus retain a considerable degree of control over the GRI.

How – if at all – does this accountability record translate into success? Here, hard facts are difficult to obtain without actually asking stakeholders and (potential) reporters what importance they attach to the transparency and accountability of decision-making in GRI. Lacking this information, we can only observe that for the GRI itself, transparency clearly has a strategic dimension. By giving stakeholders the opportunity to comment on draft documents, the GRI integrates potential critics and prevents them from openly challenging the organization. By being relatively open about how feedback is used, it demonstrates its sincerity and shields itself from higher expectations. By providing a system of checks and balances within the organization, it publicly demonstrates that no stakeholder group may dominate the process. And by publicly stating its own goals, it gives its audiences a yardstick by which to measure the organization's performance.

All these can be seen as more or less direct incentives to accept the GRI and its outcomes as a reasonable consensus and/or as disincentives for critics to fundamentally challenge the organization. While inclusiveness and deliberation serve as a *trigger* for adherence, transparency and accountability therefore seem relevant primarily as *safeguards* for progress made as a result of inclusive and deliberative decision-making. In other words, while inclusiveness and deliberation are important to *gain* legitimacy with different audiences, transparency and accountability appear more relevant to *maintain* legitimacy. In line with this finding, the GRI is increasingly concerned with transparency and accountability as it is both growing and maturing (Dickinson 2006: 2).

7. Summary and Concluding Thoughts

Private transnational governance schemes deploy a significant share of their resources to advocate their procedural legitimacy. Assuming that their primary concern is to ensure their own success, this suggests that the initiators of private governance schemes presume a strong relation between a scheme's perception as legitimate and its success. Based on this observation, this article has explored the general hypothesis that the normative procedural legitimacy of private transnational governance schemes – defined in terms of inclusiveness, deliberativeness, transparency, and accountability – enhances their prospects for success. Our particular focus was on *how* right process may translate into compliance and, subsequently, success. To this end, we have identified three social mechanisms that are supposed to link the two variables: the development of ownership on the basis of inclusive, fair and representative participation; social learning and persuasion based on deliberative procedures, and social control based on transparency and accountability.

Having subjected the three mechanisms to a plausibility probe in an illustrative case study of the Global Reporting Initiative, two main conclusions can be drawn. First, at least for the GRI, all three mechanisms appear relevant. The GRI uses different methods of engaging its stakeholders in the decision-making process. Yet it does so not primarily for moral, but for instrumental reasons, most notably to enhance the quality of its results and to ensure that "stakeholders are satisfied that they are influencing the standard" (Dickinson 2006: 2). As a result, participants in the GRI's working groups share the organization's credo "that many of the GRI's success stories owe to the GRI's strong investment in the stakeholder engagement process" (Dickinson 2006:2). The data presented in section 6 indicates that those organizations that have been involved more closely in the decision-making process are also reporting more often and adhering more closely to reporting framework devised by the GRI.

Second, the characteristics and related mechanisms are relevant at different stages of the GRI process. While inclusiveness and deliberation are primarily relevant to *gain legitimacy*, transparency and accountability are more central to *maintain legitimacy* with different audiences. This finding is consistent with Suchman's argument that empirically, gaining, maintaining and repairing legitimacy are distinct aspects of managing an organization's legitimacy (Suchman 1995).

These findings also resonate with evidence from other cases such as environmental certification schemes. For instance, Penny Fowler and Simon Heap (2000) hold that the Forest Stewardship Council (FSC) is more successful than the Marine Stewardship Council (MSC) partly because it is more *inclusive*. In fact, the MSC only established a stakeholder council when its certification scheme failed to deliver the expected results. In a similar vein, Lars H. Gulbrandsen argues that the "*lack of ownership* felt by many forest owners to the FSC" is a partial explanation for the proliferation of competing programs dominated by industry (Gulbrandsen 2004: 94f, emphasis added). Second, *transparency* and *accountability* proved crucial when the Forest Stewardship Council's integrity was challenged by allegations that its certification scheme was not operating in accordance with its own regulations. The FSC could fend off this challenge when member organizations rushed to support the organization and asserted that most of the deficits mentioned in the critics' report had already been addressed by the FSC when the study was published (Pattberg 2004: 155 et seq.. While the initial allegations involved a reputational risk for the FSC, the fact that other organizations could rapidly react to the report and base their responses on publicly accessible information helped to signal to the wider stakeholder community that control mechanisms were working properly. Finally, *deliberative procedures* are a crucial factor in accounting for the (partial) success of the World Commission on Dams where a high quality deliberations and a strong collective identity provided the basis for most commission members to defend the final outcomes vis-à-vis their constituencies as a set of reasonable norms and rules (Dingwerth 2007).

In sum, these concluding remarks point us to a number of questions that would seem to follow as the next logical steps in an effort to further explore the link between the procedural quality and political effectiveness of private transnational governance schemes. Three points seem particularly relevant in any effort to pin down more precisely the conditions under which normatively justified procedures contribute to the success or failure of private transnational governance schemes.

First, a simple translation of procedural legitimacy into success clearly underestimates the *complexity* of private governance. Most importantly, it is simplistic in the way that it does not take into account that different actors may have different reasons for granting legitimacy (Huckel 2005). While the business community may see inclusiveness and deliberation as instruments to enhance the epistemic value of decisions, civil society organizations may value them for intrinsic reasons; moreover, they may put more emphasis on additional values such as equality or fairness. Transparency appears relevant to everyone, as no one wishes to lose control over the decision-making process, especially where confidence is low. That inclusiveness, deliberation and transparency appeal to both business and civil society communities – although for different reasons – might thus explain why these concepts are so prominent in cross-sector partnerships. Yet, the precise roles of different values for different stakeholder groups will need to be explored in greater depth.

Second, our findings suggest that the importance of procedural legitimacy may differ across the various *stages* of a governance process. It may be not be very important at the very beginning of the process (i.e., when some individuals or groups join forces to initiate a standard-setting process), but is likely to become more and more important once the rules are being drafted and later implemented. Specifically at the stage of compliance management, due procedures are likely to gain further relevance. Private governance arrangements that can build upon accepted structures that have been implemented already during initial negotiations may have an advantage during this later phase. Overall, it therefore seems worthwhile to further investigate how relevant different aspects of procedural legitimacy are at different stages of the policy process.

Third, *trade-offs* between different aspects of procedural legitimacy – and therefore between the mechanisms identified in this paper – are likely to further increase the complexity of the issue. For example, transparency and deliberation are often seen as mutually exclusive. Moreover, difficulties arise in balancing demands for greater inclusiveness with demands for efficient decision-making procedures. How thresholds of adequate inclusiveness, transparency or deliberation are determined, what kind of trade-offs appear in practice and how and with which consequences they are dealt with are therefore intriguing questions for further research on the link between the procedural legitimacy and success of private governance schemes.

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Workshop: Legitimität und Effektivität transnationaler Politiknetzwerke

8./9. Dezember 2006, FU Berlin, SFB 700 „Governance in Räumen begrenzter Staatlichkeit“

Im Dezember 2006 fand am SFB 700 ein Workshop statt, dessen Teilnehmerinnen und Teilnehmer die Frage diskutierten, inwiefern die Legitimität und die Effektivität transnationaler Politiknetzwerke und Public Private Partnerships zusammenhängen. Das vorliegende Arbeitspapier war die Grundlage für diese Diskussion. Es geht davon aus, dass Legitimität eine wichtige Voraussetzung für den Erfolg privater Steuerung ist. Offen ist jedoch die Frage, *wie* dies funktioniert. Sind es die demokratischen Verfahren in öffentlich-privaten Politiknetzwerken, die zur Legitimität führen und über die frühzeitige Einbindung der Regelungsadressaten auch zum Erfolg? Oder sind andere Faktoren, wie Expertise, materielle Ressourcen, vorzuweisende Erfolge, wichtigere Gründe für die empirische Anerkennung von privaten Steuerungsinitiativen?

Zentrales Thema des Workshops war zum einen die Frage, *wie sich private Steuerungsmechanismen gegenüber ihren Adressatenkreisen legitimieren* – z.B. über die Einhaltung demokratischer Prinzipien oder über die erfolgreiche Behauptung von Expertise. Zum anderen zielte der Workshop darauf ab, Kausalmechanismen zu identifizieren, die uns Aufschluss darüber geben, *unter welchen Bedingungen und auf welchen Pfaden sich die Legitimität nichtstaatlicher oder öffentlich-privater Steuerung auch auf den Erfolg dieser Steuerung auswirkt.*

Im Rahmen des Workshops präsentierten verschiedene Wissenschaftler/innen ihre empirischen Arbeiten, die sich mit der Legitimität und/oder Effektivität konkreter transnationaler Politikprozesse befassen. Ziel des Workshops war es, das Wissen, das in den vergangenen Jahren in zahlreichen Einzelfall- und einigen vergleichenden Studien über transnationale Politikprozesse generiert wurde, mit Bezug auf die oben genannte Fragestellung zusammen zu führen und zu diskutieren. In Ergänzung zur im vorliegenden Arbeitspapier diskutierten Literatur und Empirie zur „Global Reporting Initiative“ dokumentieren wir hier die wichtigsten vorliegenden Publikationen der Workshopteilnehmer/innen zum Thema. Weitere Informationen auch unter www.sfb-governance.de/ppp.

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Research Framework of the Research Center (SFB) 700

Governance has become a central theme in social science research. The Research Center (SFB) 700 *Governance in Areas of Limited Statehood* investigates governance in areas of limited statehood, i.e. developing countries, failing and failed states, as well as, in historical perspective, different types of colonies. How and under what conditions can governance deliver legitimate authority, security, and welfare, and what problems are likely to emerge? Operating since 2006 and financed by the German Research Foundation (DFG), the Research Center involves the Freie Universität Berlin, the University of Potsdam, the European University Institute, the Hertie School of Governance, the German Institute for International and Security Affairs (SWP), and the Social Science Research Center Berlin (WZB).

Partner Organisations of the Research Center (SFB) 700

Host University
Freie Universität Berlin

University of Potsdam

Social Science Research Center Berlin (WZB)

German Institute for International and
Security Affairs (SWP)
Hertie School of Governance

European University Institute
Florence (EUI)